

EXHIBIT A

SUM-100

AMENDED SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Atriura Medical Corporation et al.
(See Additional Parties Attachment)

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Robyn Blasco et al.
(See Additional Parties Attachment)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
FILED
ALAMEDA COUNTY

JUN 24 2014

CLERK OF THE SUPERIOR COURT

By Rosa-Angela Snock
Deputy

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's fee must be paid before the court will dismiss the case. (AVISO) Le han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of the State of California
County of Alameda--Rene C. Davidson Courthouse
1225 Fallon Street, Oakland, CA 94612

CASE NUMBER
(Número del Caso)

RG 11730177

The name, address, and telephone number of plaintiff's attorney or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Dan C. Bolton, Keller, Fishback & Jackson, LLP, 28720 Canwood Street, Suite 200, Agoura Hills,
CA 91301, 818 342-7442

DATE:

(Fecha)

JUN 24 2014

Loan T. Wilson

Clerk, by
(Secretario)

Rosa-Angela Snock

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Robyn Blasco et al. v. Atrium Medical Corporation et al.	CASE NUMBER: RG 14730177
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.).

☒ Plaintiff ☐ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

Robyn Blasco
 Cathy Carson
 Susan Hahn
 Pamela Mushtaq
 Robert Sprankle
 Joseph Bragg
 Janice Kowaleski
 Juan Paredes

Page 2 of 3

Page 1 of 1

SUM-200(A)

SHORT TITLE: Robyn Blasco et al. v. Atrium Medical Corporation et al.	CASE NUMBER: RG 14730177
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

Atrium Medical Corporation
 Getinge Group
 Getinge USA, Inc.
 Maquet Cardiovascular, LLC
 Maquet Cardiovascular US Sales, LLC
 Maquet Medical Systems USA
 Does 1-20

Page 3 of 3

Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dan C. Bolton (State Bar No. 104236) KELLER, FISHBACK & JACKSON LLP 28720 Canwood Street, Suite 200 Agoura Hills, CA 91301 TELEPHONE NO. 818.342.7442 FAX NO.: 818.342.7616 ATTORNEY FOR (Name) Plaintiffs		FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY JUN 23 2014 CLERK OF THE SUPERIOR COURT By <u>CHERYL BLANK</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS 1225 Fallon Street MAILING ADDRESS same CITY AND ZIP CODE Oakland, CA 94612 BRANCH NAME Rene C. Davidson Courthouse		
CASE NAME: Robyn Blasco et al. v. Atrium Medical Corporation et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
		CASE NUMBER: <u>14730177</u> JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2)

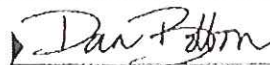
1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIPD/WD (23) Non-PIPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 7
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 20, 2014

Dan C. Bolton



(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal Rules of Court Rules 3.400-3.403)
Auto (22) Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental Lease	Construction Defect (10)
	Contract (not unlawful detainer or wrongful eviction)	Claims Involving Mass Tort (40)
	Contract/Warranty Breach-Seller	Securities Litigation (28)
	Plaintiff (not fraud or negligence)	Environmental/Toxic Tort (30)
	Negligent Breach of Contract	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
	Warranty	
	Other Breach of Contract/Warranty	Enforcement of Judgment
Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Collections (e.g., money owed, open book accounts) (09)	Enforcement of Judgment (20)
Asbestos (04)	Collection Case-Seller Plaintiff	Abstract of Judgment (Out of County)
Asbestos Property Damage	Other Promissory Note/Collections Case	Confession of Judgment (non-domestic relations)
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18)	Sister State Judgment
Product Liability (not asbestos or toxic/environmental) (24)	Auto Subrogation	Administrative Agency Award (not unpaid taxes)
Medical Malpractice (45)	Other Coverage	Petition/Certification of Entry of Judgment on Unpaid Taxes
Medical Malpractice - Physicians & Surgeons	Other Contract (37)	Other Enforcement of Judgment Case
Other Professional Health Care Malpractice	Contractual Fraud	
Other PII/PD/WD (23)	Other Contract Dispute	Miscellaneous Civil Complaint
Premises Liability (e.g., slip and fall)	Real Property	RICO (27)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Other Complaint (not specified above) (42)
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	Declaratory Relief Only
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Injunctive Relief Only (non-harassment)
Other PII/PD/WD	Writ of Possession of Real Property	Mechanics Lien
Non-PII/PD/WD (Other) Tort	Mortgage Foreclosure	Other Commercial Complaint Case (non-tort/non-complex)
Business Tort/Unfair Business Practice (07)	Quiet Title	Other Civil Complaint (non-tort/non-complex)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Miscellaneous Civil Petition
Fraud (16)	Commercial (31)	Partnership and Corporate Governance (21)
Intellectual Property (19)	Residential (32)	Other Petition (not specified above) (43)
Professional Negligence (25)	Drugs (38) (if the case involves illegal drugs, check this item, otherwise, report as Commercial or Residential)	Civil Harassment
Legal Malpractice	Judicial Review	Workplace Violence
Other Professional Malpractice (not medical or legal)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Non-PII/PD/WD Tort (35)	Petition Re: Arbitration Award (11)	Election Contest
Employment	Writ of Mandate (02)	Petition for Name Change
Wrongful Termination (36)	Writ-Administrative Mandamus	Petition for Relief From Late Claim
Other Employment (15)	Writ-Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ-Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal-Labor	
	Commissioner Appeals	

Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: <i>Robyn Blasco et al. v. Atrium Medical Corporation et al.</i>	Case Number:
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CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

<input type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)		<input type="checkbox"/> Hayward Hall of Justice (447)	
<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)			
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G)	
		Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no	
Other PI / PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)	
	Product liability (24)	<input checked="" type="checkbox"/> 89 Product liability (no asbestos or toxic tort/environmental) (G)	
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)	
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)	
Non - PI / PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)	
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)	
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)	
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)	
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)	
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)	
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)	
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)	
		<input type="checkbox"/> 53 Labor comm award confirmation	
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)	
	Collections (09)	<input type="checkbox"/> 81 Collections (G)	
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)	
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)	
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial	Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential	
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs	
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture	
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award	
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate	
		Is this a CEQA action (Publ. Res. Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review	
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation	
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect	
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort	
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation	
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental	
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment	
		<input type="checkbox"/> 08 Confession of judgment	
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)	
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)	
	Other complaint (42)	<input type="checkbox"/> 68 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name	
		<input type="checkbox"/> 69 Other petition	

ENDORSED
FILED
ALAMEDA COUNTY

JUN 28 2014

CLERK OF THE SUPERIOR COURT
By CHERYL CLARK Deputy

1 KELLER, FISHBACK & JACKSON LLP
2 Daniel L. Keller (State Bar No. 191738)
3 Dan C. Bolton (State Bar No. 104236)
4 Farid Zakaria (State Bar No. 280283)
5 28720 Canwood Street, Suite 200
6 Agoura Hills, CA 91301
7 Telephone: 818.342.7442
8 Facsimile: 818.342.7616

9 Attorneys for Plaintiffs

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13

14 ROBYN BLASCO, CATHY CARSON,
15 SUSAN HAHN, PAMELA MUSHTAQ,
16 ROBERT SPRANKLE, JOSEPH BRAGG,
17 JANICE KOWALESKI, JUAN PAREDES,

18 Plaintiffs,

19 vs.

20 ATRIUM MEDICAL CORPORATION,
21 GETINGE GROUP, GETINGE USA, INC.,
22 MAQUET CARDIOVASCULAR, LLC,
23 MAQUET CARDIOVASCULAR US SALES,
24 LLC, MAQUET MEDICAL SYSTEMS USA,
25 and DOES 1-20,

26 Defendants.
27
28

Case No. *RG* 14730177

COMPLAINT FOR DAMAGES

1. Strict Liability - Failure to Warn
2. Strict Liability - Manufacturing Defect
3. Negligence
4. Breach of Implied Warranty
5. Breach of Express Warranty
6. Fraud
7. Negligent Misrepresentation

1. This case involves a synthetic monofilament polypropylene mesh medical device implanted in each plaintiff. The polypropylene mesh device was manufactured, promoted, marketed, distributed and sold by Defendants for use in hernia repair.

3. Polypropylene mesh was never approved as safe and effective by the FDA. Most medical devices, including mesh devices used for hernia repair, are “cleared” for marketing by the FDA under the 510(k) process of the Federal Food, Drug and Cosmetic Act. This process requires only that the manufacturer claim that the new device is “substantially equivalent” to another legally marketed predicate device – a device that itself was never reviewed for safety and efficacy. Under the United States Supreme Court decision in *Medtronic Inc. v. Lohr* 518 U.S. 470 (1996), the preemption doctrine does not apply to devices cleared for marketing under the 510(k) process.

PARTIES

6. Plaintiff Cathy Carson is a resident of Clairton, Pennsylvania, and was implanted with ProLite polypropylene mesh.

1 7. Plaintiff Susan Hahn is a resident of Keaau, Hawaii, and was implanted with ProLoop
2 polypropylene mesh.

3 8. Plaintiff Pamela Mushtaq is a resident of Alpharetta, Georgia, and was implanted with
4 ProLite polypropylene mesh.

5 9. Plaintiff Robert Sprankle is a resident of Portsmouth, New Hampshire, and was implanted
6 with ProLoop polypropylene mesh.

7 10. Plaintiff Joseph Bragg is a resident of Ward, Arkansas, and was implanted with ProLite
8 polypropylene mesh.

9 11. Plaintiff Janice Kowaleski is a resident of Kearny, New Jersey, and was implanted with
10 C-QUR polypropylene mesh.

11 12. Plaintiff Juan Paredes is a resident of North Bergen, New Jersey, and was implanted with
12 ProLoop polypropylene mesh.

13 13. Defendant Atrium Medical Corporation ("Atrium") is a Delaware corporation
14 headquartered at 5 Wentworth Drive, Hudson, New Hampshire. Atrium is a pharmaceutical
15 company involved in the research, development, testing, manufacture, production, distribution,
16 marketing, promotion and/or sale of medical devices used for hernia repair, including
17 polypropylene mesh.

18 14. Defendant Getinge Group ("Getinge") is a Swedish corporation doing business in the
19 United States. Getinge is a pharmaceutical company involved in the research, development, testing,
20 manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for
21 hernia repair, including polypropylene mesh.

22 15. Defendant Getinge USA, Inc. ("Getinge USA") is a Delaware corporation headquartered
23 at 1777 East Henrietta Road, Rochester, New York. Getinge USA is a pharmaceutical company
24 involved in the research, development, testing, manufacture, production, distribution, marketing,
25 promotion and/or sale of medical devices used for hernia repair, including polypropylene mesh.

26 16. Defendant Maquet Cardiovascular LLC ("Maquet") is a German corporation doing
27 business in the United States. Maquet is a pharmaceutical company involved in the research,
28 development, testing, manufacture, production, distribution, marketing, promotion and/or sale of

1 medical devices used for hernia repair, including polypropylene mesh. In October 2011, Atrium
2 announced that it had signed an agreement to be acquired by Getinge and its subsidiary, Maquet.

3 17. Defendant Maquet Cardiovascular US Sales, LLC ("Maquet Cardiovascular") is a
4 Delaware corporation headquartered at 45 Barbour Pond Drive, Wayne, New Jersey. Maquet
5 Cardiovascular is a pharmaceutical company involved in the research, development, testing,
6 manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for
7 hernia repair, including polypropylene mesh.

8 18. Defendant Maquet Medical Systems USA ("Maquet USA") is a Delaware corporation
9 headquartered at 45 Barbour Pond Drive, Wayne, New Jersey. Maquet USA is a pharmaceutical
10 company involved in the research, development, testing, manufacture, production, distribution,
11 marketing, promotion and/or sale of medical devices used for hernia repair, including
12 polypropylene mesh.

13 19. The true names and capacities, whether individual, corporate, associate or otherwise, of
14 defendants DOES 1 through 20, are unknown to plaintiffs who therefore sue these defendants by
15 such fictitious names. Plaintiffs will amend this Complaint when the true names and capacities of
16 these fictitiously named defendants are ascertained. Plaintiffs are informed and believe, and
17 thereon allege, that each fictitiously named defendant, whether as a supplier, manufacturer,
18 distributor, marketer or seller, is responsible, strictly, negligently, in warranty, fraudulently or
19 otherwise, for the occurrences alleged in this Complaint, and caused the injuries and damages
20 sustained by Plaintiffs as herein alleged.

21 20. At all times herein mentioned, each of the defendants was the agent, servant, employee
22 and/or joint venturer of the codefendants, and each of them, and was acting in the course and scope
23 of that agency, service, employment and/or joint venture.

24 FACTUAL BACKGROUND

25 21. Hernia, a condition affecting thousands of men and women in the United States each year,
26 is the protrusion or projection of an organ or tissue through the wall that normally contains it.
27 Although a hernia may form in any part of the abdominal wall, the most common site is the groin.
28 Groin hernias are known as inguinal or femoral, depending on the location of the hernia. Another

1 type of hernia is the ventral hernia (also sometimes called abdominal hernia). There are two types
2 of ventral hernias. One is known as an umbilical hernia and occurs in the umbilical ring that
3 surrounds the navel. The other is referred to as an incisional hernia which occurs around surgical
4 incisions.

5 22. Until 1958, abdominal wall hernias were repaired without mesh. In 1958, Dr. Frances
6 Usher published a medical journal article entitled *Marlex mesh, a new plastic mesh for replacing*
7 *tissue defects*. Dr. Usher used polypropylene mesh in experimental canine work for abdominal
8 repair. Polypropylene is a petroleum-based plastic initially used in the Hula-Hoop and for kitchen
9 storage applications.

10 23. Heavily promoted by the medical device manufacturers, including Defendants, hernia
11 mesh, typically made wholly or partly of polypropylene, is frequently used in hernia repair surgery.
12 About one million hernia repair surgeries with mesh are performed world-wide each year. Despite
13 the marketing push by mesh manufacturers, including Defendants, to persuade doctors to use mesh
14 in hernia repair, many doctors steer away from polypropylene mesh and use the Shouldice
15 technique for hernia repair. The Shouldice technique, used for decades, is a mesh-free hernia repair
16 method.

17 24. It has been known since 1953 that any implanted device must not be physically modified
18 by tissue fluids, be chemically inert, not incite an inflammatory or foreign body cell reaction, be
19 non-carcinogenic, not produce allergic reactions, and be able to withstand mechanical stress. D.
20 Ostergard, *Degradation, Infection and Heat Effects on Polypropylene Mesh for Pelvic*
21 *Implantation: What Was Known and When it Was Known*, 22 INT'L UROGYNECOLOGY J. 771-774
22 (2011).

23 25. Polypropylene is not biologically inert in the human body, and can cause serious
24 injury to patients, significantly impacting their quality of life. As one author stated, "[p]rosthetic
25 meshes are ... not the inert materials they are claimed to be and can expand as well as shrink." A.
26 Coda, *Structural Alterations of Prosthetic Meshes in Humans*, 7 HERNIA 29-34 (2003).

27 26. A typical response to mesh implanted in the human body is inflammation, granuloma
28 formation and a foreign body reaction. Scar tissue forms around the implant and causes contraction

1 of the mesh up to 50%. This inflammation, foreign body response and scar tissue formation is a
2 permanent condition and can result in long-term complications. U. Klinge et al., *Foreign Body*
3 *Reaction to Meshes Used for the Repair of Abdominal Wall Hernias*, 165 EUR. J. SURGERY 665-73
4 (1999).

5 27. Despite the promotion of mesh as safe and effective by Defendants, the published medical
6 literature contradicts this unsupported belief. One author observed that "[t]he literature suggests
7 otherwise with reports of various degrees of degradation, including depolymerization, cross-linking,
8 oxidative degradation by free radicals, additive leaching, hydrolysis, stress cracking and mesh
9 shrinkage along with infection, chronic inflammation and the stimulation of sclerosis." The author
10 concluded, "Based on available evidence the polypropylene used for surgical treatment of various
11 structural defects is not inert after implantation in the human body." G. Sternschuss et al., *Post-*
12 *implantation Alterations of Polypropylene in the Human*, 188 J. UROL. 27-32 (2012). As the mesh
13 degrades in the human body, small flakes of polypropylene can lead to infection and irritation, and
14 resultant serious pain, as the body tries to rid itself of the foreign material.

15 28. Once implanted, mesh contracts as well as cracks substantially in the human body. In one
16 study, a contracture rate of 30% to 50% was found four weeks after implantation. Another study
17 reported an 85% contracture rate after eight years. Nerve fibers are entrapped in the contracted
18 tissue causing severe pain.

19 29. A debilitating consequence of hernia repair with mesh is inguinodynia, or chronic groin
20 pain. This condition results from nerves, such as the ilioinguinal, iliohypogastric and genitofemoral
21 nerves, coming into contact with mesh, after its degradation and deformation in the body following
22 implantation, and from the persistent and permanent foreign body reaction to the implantation of
23 mesh. It has been reported that hernia repair with mesh results in an extraordinarily high rate of
24 inguinodynia – in some reports approaching 50%. See, e.g., J.E. Fischer, *Hernia Repair: Why Do*
25 *We Continue to Perform Mesh Repair in the Face of Human Toll of Inguinodynia?* 206 AMER. J.
26 SURG. 619-23 (2013).

27 30. Other studies have found an even higher rate of chronic pain after hernia repair with
28 mesh. One study found that approximately 75% of patients had pain one year after hernia repair at

1 rest, and 78% had pain when moving. B. Page, *Pain From Primary Inguinal Hernia and the Effect*
2 *of Repair on Pain*, 89 BRIT. J. SURG. 1315-18 (2002).

3 31. Despite the abundance of scientific and medical information published in the literature
4 relating to the dangerous properties and serious risks of polypropylene mesh, Defendants made a
5 deliberate decision to ignore these dangers and to aggressively promote polypropylene mesh to
6 healthcare providers and consumers. Defendants misrepresented and concealed from Plaintiffs,
7 their physicians and consumers, the serious risks, dangers and defects enumerated in this
8 Complaint.

9 **PLAINTIFF FACTUAL ALLEGATIONS**

10 32. The hernia mesh implanted in each Plaintiff was polypropylene mesh manufactured,
11 promoted, marketed, distributed and sold by Defendants.

12 33. The polypropylene mesh caused Plaintiffs to suffer permanent injuries, substantial pain
13 and suffering, emotional distress, medical expenses, lost wages and earning capacity, and
14 diminished quality of life.

15 34. Before Plaintiffs underwent hernia repair surgery with polypropylene mesh, they had no
16 history of these physical and emotional injuries.

17 35. Pursuant to Code of Civil Procedure section 378, each Plaintiff suffered injuries arising
18 out of the same transaction, occurrence and/or series of transactions or occurrences in the design,
19 manufacture, distribution, promotion, marketing, sale and warnings of the polypropylene mesh, and
20 questions of law and fact common to all Plaintiffs arise in this action.

21 36. Plaintiffs filed this lawsuit within the applicable limitations period of first suspecting
22 polypropylene mesh caused the harm and injuries suffered by Plaintiffs. Plaintiffs could not, by the
23 exercise of reasonable diligence, have discovered the wrongful cause of their injuries at an earlier
24 time because the injuries were caused without perceptible trauma or harm, and when the injuries
25 were discovered, their cause was unknown to Plaintiffs. Plaintiffs did not suspect, nor did Plaintiffs
26 have reason to suspect, that Plaintiffs had been injured, the cause of the injuries, or the wrongful
27 nature of the conduct causing the injuries, until less than the applicable limitations period before the
28 filing of this Complaint. Moreover, Plaintiffs were prevented from discovering this information

1 sooner because Defendants misrepresented and concealed, and continue to misrepresent and
 2 conceal to the public and the medical profession, the dangers of polypropylene mesh, as well as the
 3 true facts that could have led Plaintiffs to discover a cause of action against Defendants for their
 4 wrongful conduct.

5 FIRST CAUSE OF ACTION

6 STRICT LIABILITY – FAILURE TO WARN

7 37. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint as
 8 if fully set forth herein.

9 38. Defendants designed, manufactured, distributed, promoted, marketed and sold the
 10 polypropylene mesh and it was expected to reach, and did reach, physicians and consumers,
 11 including Plaintiffs, without substantial change in the condition in which it was sold.

12 39. The polypropylene mesh manufactured, distributed, promoted, marketed and sold by
 13 Defendants was defective and dangerous at the time it was placed in the stream of commerce
 14 because of the lack of appropriate and necessary warnings of known or knowable dangers.

15 40. The absence and inadequate warnings include, but are not limited to, the following:

- 16 a. the danger of mesh to contract, shrink, expand, swell and/or deform after
- 17 implantation;
- 18 b. the danger of mesh to degrade, fragment and creep after implantation;
- 19 c. the danger of mesh erosion, extrusion and/or migration;
- 20 d. the inability to withstand mechanical stress after implantation;
- 21 e. the lack of biological inertness of polypropylene mesh;
- 22 f. the danger of chronic inflammation, granuloma formation and foreign body cell
- 23 reaction;
- 24 g. the danger of chronic infections;
- 25 h. the danger of permanent scar tissue formation and sclerosis;
- 26 i. the danger of the recurrence of hernia;
- 27 j. the danger of inguinodynia, or chronic groin pain;
- 28 k. the danger of mesh coming into contact with nerves and nerve damage;

- l. the danger of organ damage;
- m. the danger of spermatic cord damage and testicular pain;
- n. the danger of pain during sexual intercourse and sexual dysfunction;
- o. the danger of autoimmune disease;
- p. the potential for revision surgery following implantation;
- q. hernia repair with mesh is no more effective than other alternative hernia repair methods;
- r. the difficulties of removing mesh from the body following implantation;
- s. the danger of leaving residual mesh in the body after implantation;
- t. the substantial impairment of the quality of life following mesh implantation.

41. The polypropylene mesh manufactured, sold, distributed and promoted by Defendants was defective due to inadequate post-marketing warnings and/or instructions because, after Defendants knew or should have known of the risk of serious bodily harm from the use of polypropylene mesh, Defendants failed to provide an adequate warning to consumers and/or their health care providers of the product, knowing the product could cause serious injury.

42. Plaintiffs and their physicians used the polypropylene mesh as directed for its intended purpose in hernia repair. Defendants knew that the device would be used by consumers, such as Plaintiffs, without inspection for defects, and Plaintiffs and their physicians did not know, and had no reason to know, of the existence of the above defects.

43. The polypropylene mesh was not altered or modified in any way before it was implanted in Plaintiffs.

44. As a direct and proximate result of the above defects and substantial dangers in the polypropylene mesh, Plaintiffs suffered serious injury, harm, damages, economic and non-economic loss, and will continue to suffer such harm, damages and losses in the future.

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1 SECOND CAUSE OF ACTION

2 STRICT LIABILITY – MANUFACTURING DEFECT

3 45. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint as
4 if fully set forth herein.

5 46. Defendants designed, manufactured, distributed, promoted, marketed and sold the
6 polypropylene mesh, and it was expected to reach, and did reach, physicians and consumers,
7 including Plaintiffs, without substantial change in the condition in which it was sold.

8 47. The polypropylene mesh manufactured, distributed, promoted, marketed and sold by
9 Defendants was defective and dangerous at the time it was placed in the stream of commerce with
10 respect to manufacture because it deviated materially from Defendants' design and manufacturing
11 specifications in such a manner as to make it unreasonably dangerous for its intended use.

12 48. Plaintiffs and their physicians used the polypropylene mesh as directed for its intended
13 purpose in hernia repair. Defendants knew the device would be used by consumers, such as
14 Plaintiffs, without inspection for defects, and Plaintiffs and their physicians did not know, and had
15 no reason to know, of the existence of the above defects.

16 49. The polypropylene mesh was not altered or modified in any way before it was implanted
17 in Plaintiffs.

18 50. As a proximate result of the above defects and substantial dangers in the polypropylene
19 mesh, Plaintiffs suffered serious injury, harm, damages, economic and non-economic loss, and will
20 continue to suffer such harm, damages and losses in the future.

21 THIRD CAUSE OF ACTION

22 NEGLIGENCE

23 51. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint
24 as if fully set forth herein.

25 52. At all times herein mentioned, Defendants had a duty to exercise reasonable care to
26 manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research,
27 distribute, market, label, package, prepare for use, sell and adequately warn of the risks and dangers
28 of polypropylene mesh.

1 53. At all times herein mentioned, Defendants negligently, carelessly, recklessly and/or
2 maliciously manufactured, designed, formulated, distributed, compounded, produced, processed,
3 assembled, inspected, tested, distributed, marketed, labeled, packaged, prepared for use and sold
4 polypropylene mesh, and negligently, carelessly, recklessly and/or maliciously failed to adequately
5 warn of the risks and dangers of polypropylene mesh, and to adequately provide post-marketing
6 warnings of such risks and dangers. Defendants breached their duty by:

- 7 a. Failing to design the polypropylene mesh so as to avoid an unreasonable risk of
8 harm to persons in whom the device was implanted, including Plaintiffs;
- 9 b. Failing to manufacture the polypropylene mesh so as to avoid an unreasonable risk
10 of harm to persons in whom the device was implanted, including Plaintiffs;
- 11 c. Failing to use reasonable care in the testing of the polypropylene mesh so as to avoid
12 an unreasonable risk of harm to persons in whom the device was implanted,
13 including Plaintiffs;
- 14 d. Failing to use reasonable care in inspecting the polypropylene mesh so as to avoid an
15 unreasonable risk of harm to persons in whom the device was implanted, including
16 Plaintiffs;
- 17 e. Otherwise negligently designing, manufacturing, distributing, promoting, marketing
18 and selling polypropylene mesh.

19 54. Defendants also negligently failed to warn or instruct Plaintiffs, and their physicians, as
20 set forth above in this Complaint.

21 55. Despite the fact that Defendants knew or should have known that polypropylene
22 mesh caused unreasonable and dangerous risks and complications, and failed to warn of those risks
23 and complications, Defendants continued to market polypropylene mesh to consumers including
24 Plaintiffs.

25 56. Defendants knew or should have known that consumers such as Plaintiffs would
26 foreseeably suffer injury as a result of the failure of Defendants to exercise ordinary care as
27 described above.
28

1 57. The negligence of Defendants was a proximate cause of Plaintiffs' injuries, harm,
2 economic and non-economic loss which Plaintiffs suffered, and will continue to suffer, as described
3 herein.

4 **FOURTH CAUSE OF ACTION**

5 **BREACH OF IMPLIED WARRANTY**

6 58. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint as
7 if fully set forth herein.

8 59. Before polypropylene mesh was implanted in Plaintiffs, Defendants impliedly warranted
9 to Plaintiffs, and their physicians, that polypropylene mesh was of merchantable quality,
10 adequately contained, packaged and labeled, and safe and fit for the use in hernia repair.

11 60. Plaintiffs were and are inexperienced in the research, design, manufacture, sale and
12 distribution of medical devices such as polypropylene mesh, and reasonably relied upon the skill,
13 judgment and implied warranty of the Defendants in undergoing hernia repair surgery with
14 polypropylene mesh.

15 61. Polypropylene mesh was neither safe for its intended use nor of merchantable quality, as
16 warranted by Defendants, since it causes serious medical problems and complications when used as
17 intended and will cause injury to consumers who undergo hernia repair with polypropylene mesh.

18 62. As a result of the breach of implied warranties by Defendants, Plaintiffs suffered injuries
19 and damages as herein alleged.

20 **FIFTH CAUSE OF ACTION**

21 **BREACH OF EXPRESS WARRANTY**

22 63. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint
23 as if fully set forth herein.

24 64. At all times herein mentioned, Defendants expressly represented and warranted to
25 Plaintiffs and Plaintiffs' physicians, by and through statements made by Defendants or their
26 authorized agents or sales representatives, orally and in publications, package inserts and other
27 written materials intended for physicians, healthcare providers, medical patients and the general
28 public, that polypropylene mesh is safe, effective, fit and proper for its intended use in hernia repair.

1 65. In implanting polypropylene mesh for hernia repair, Plaintiffs relied on the
2 skill, judgment, representations and foregoing express warranties of Defendants. These warranties
3 and representations were false in that polypropylene mesh is unsafe, unfit and ineffective for its
4 intended purpose in hernia repair as described in this Complaint.

5 66. As a result of the breach of express warranties by Defendants, Plaintiffs suffered
6 injuries and damages as alleged herein.

7 SIXTH CAUSE OF ACTION

8 FRAUD

9 67. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint
10 as if fully set forth herein.

11 68. Defendants, from the time they first tested, studied, researched, evaluated, endorsed,
12 manufactured, marketed and distributed polypropylene mesh, and up to the present, wilfully
13 deceived Plaintiffs by concealing from them, Plaintiffs' physicians and the general public, the true
14 facts concerning polypropylene mesh, which the Defendants had a duty to disclose.

15 69. At all times herein mentioned, Defendants conducted a sales and marketing campaign to
16 promote the sale of polypropylene mesh and wilfully deceive Plaintiffs, Plaintiffs' physicians and
17 the general public as to the benefits, health risks and consequences of using polypropylene mesh
18 for hernia repair. Defendants knew of the foregoing, that polypropylene mesh is not safe, fit or
19 effective for human implantation, that undergoing implantation with polypropylene mesh is
20 hazardous to health, and that polypropylene mesh has a serious propensity to cause injuries and
21 harm to consumers, including but not limited to the injuries Plaintiffs suffered.

22 70. Defendants suppressed and concealed the true facts concerning polypropylene mesh with
23 the intent to defraud Plaintiffs, in that Defendants knew that Plaintiffs' physicians would not have
24 used, and Plaintiffs would not have undergone implantation with, polypropylene mesh, if they were
25 aware of the true facts concerning its dangers.

26 71. As a result of Defendants fraud and deceit, Plaintiffs suffered the injuries and damages
27 as herein alleged.
28

1 SEVENTH CAUSE OF ACTION

2 NEGLIGENT MISREPRESENTATION

3 72. Plaintiffs incorporate by reference herein all of the above allegations in this Complaint
4 as if fully set forth herein.

5 73. From the time polypropylene mesh was first tested, studied, researched, evaluated,
6 endorsed, manufactured, marketed and distributed, and up to the present, Defendants made
7 misrepresentations to Plaintiffs, Plaintiffs' physicians and the general public, including but not
8 limited to the misrepresentation that polypropylene mesh was safe, fit and effective for use in hernia
9 repair. At all times herein mentioned, Defendants conducted a sales and marketing campaign to
10 promote the sale of polypropylene mesh and wilfully deceive Plaintiffs, Plaintiffs' physicians and
11 the general public as to the health dangers and consequences of the use of polypropylene mesh in
12 hernia repair.

13 74. The Defendants made the foregoing representations without any reasonable ground for
14 believing them to be true. These representations were made directly by Defendants, by sales
15 representatives and other authorized agents of Defendants, and in publications and other written
16 materials directed to physicians, medical patients and the public, with the intention of inducing
17 reliance, and the purchase and use of polypropylene mesh for hernia repair.

18 75. The representations by the Defendants were in fact false, in that polypropylene mesh is
19 not safe, fit or effective for use in hernia repair, using polypropylene mesh is hazardous to health,
20 and polypropylene mesh has a serious propensity to cause injuries to consumers, including but not
21 limited to the injuries suffered by Plaintiffs.

22 76. The above representations by Defendants were made with the intention of inducing
23 reliance, and the purchase and use of polypropylene mesh for hernia repair by Plaintiffs.

24 77. In reliance on the misrepresentations by the Defendants, Plaintiffs were induced to use
25 polypropylene mesh for hernia repair. If Plaintiffs had known the true facts and the facts concealed
26 by Defendants, Plaintiffs would not have used polypropylene mesh. The reliance of Plaintiffs upon
27 Defendants' misrepresentations was justified because such misrepresentations were made and
28 carried out by individuals and entities that were in a position to know the true facts.

1 78. As a result of the above negligent misrepresentations by Defendants, Plaintiffs suffered
2 injuries and damages as alleged herein.

3 PUNITIVE DAMAGES ALLEGATIONS

4 79. Plaintiffs incorporate by reference herein all of the allegations in this Complaint as if fully
5 set forth herein.

6 80. The acts, conduct and concealment of Defendants, as alleged in this Complaint, were
7 willful, malicious, oppressive and fraudulent. Defendants committed these acts with a conscious
8 disregard for the rights and safety of Plaintiffs and other consumers, and for the primary purpose of
9 increasing Defendants' profits from the distribution and sale of polypropylene mesh. Defendants'
10 outrageous and unconscionable conduct warrants the imposition of punitive damages against
11 Defendants in an amount appropriate to punish and deter such conduct in the future.

12 81. Before the manufacture, promotion, distribution and sale of polypropylene mesh to
13 Plaintiffs, Defendants knew that it was in a defective condition, and knew that they had made a
14 strategic decision to fraudulently represent and intentionally conceal the significant risks and
15 serious dangers of polypropylene mesh, as described in this Complaint, and knew that consumers,
16 including Plaintiffs, who used polypropylene mesh for hernia repair would, and did, experience
17 severe physical, mental and emotional injuries. Further, Defendants, through their officers,
18 directors, managers and agents, knew that polypropylene mesh presented a substantial and
19 unreasonable risk of harm to the public, including Plaintiffs. Thus, Defendants unreasonably,
20 maliciously, oppressively and fraudulently subjected consumers of polypropylene mesh, including
21 Plaintiffs, to the risk of serious injury.

22 82. Despite their knowledge, Defendants, acting through their officers, directors and
23 managing agents for the purpose of enhancing the profits of Defendants, knowingly and
24 deliberately failed to remedy the known defects in polypropylene mesh and failed to warn the
25 public, including Plaintiffs, of the serious risk of injury caused by the defects in polypropylene
26 mesh. Defendants and their officers, directors and managing agents, intentionally proceeded with
27 the manufacture, sale, distribution and marketing of polypropylene mesh knowing these actions
28

1 would expose consumers, including Plaintiffs, to serious danger in order to advance Defendants'
2 financial interests and increase revenue.


3 83. Defendants' conduct was despicable and so contemptible that it would be looked down
4 upon and despised by ordinary decent people, and was carried on by Defendants with willful and
5 conscious disregard for the rights and safety of Plaintiffs and other consumers, thereby entitling
6 Plaintiffs to the imposition of punitive damages.

7
8 WHEREFORE, Plaintiffs pray for judgment against the Defendants, as follows:

- 9 1. General damages, according to proof;
10 2. Special damages, according to proof;
11 3. Loss of earnings and earning capacity, according to proof;
12 4. Medical expenses, past and future, according to proof;
13 5. Mental and emotional distress, past and future, according to proof;
14 6. Punitive damages, according to proof;
15 7. Costs of suit herein;
16 8. Pre-judgment and post-judgment interest, as provided by law; and
17 9. Such other and further relief as the Court may deem just and proper.

18
19 Dated: June 20, 2014

KELLER, FISHBACK & JACKSON LLP

20
21
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